Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

VICTOR & VIORECA MURESAN
PETITIONERS

vs.

BRIAN & CARI FISH "et al"
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

WASH. STATE COURT OF APPEALS DIV. 11

PETITION FOR WRIT OF CERTIORARI

VICTOR & VIORECA MURESAN
18716 N.E. DAVIS ROAD
BRUSH PRAIRIE, WASH. 98606
360- 892-7162

QUESTIONS PRESENTED FOR REVIEW

NO. 1

Can a judge unlawfully give away the Petitioners property rights to conniving neighbors against the intention of the original deed and Wash. law, thereby committing illegal seizure in violation of the Fourth and Fifth Amendments of the Constitution of the United States of America?

NO. 2

Can the courts and the respondents violate the Rights of Due Process including Trial by Jury of Petitioners by discrimination and trickery, Rights guaranteed to the Citizens of the United States by the Fifth Amendment of the United States Constitution which states: "nor be deprived of life, liberty, or property, without due process of law" and the Seventh Amendment which provides that " In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved ?"

NO. 3

Will the U.S. Supreme Court, the publics highest, last legal resort, finally grant the Petitioners their "Peaceful and Quiet Enjoyment in Clark County", protecting their property rights guaranteed with the American Citizens rights of ownership and free them from the courts wrongful act ,obviously outrageous, shameful and untenable violations ?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceding in the court whose judgment is the subject of this petition is as follows:

Respondents:
Brian and Cari Fish
18900 N.E.Davis Road
Brush Prairie, Wash. 98606

Respondent:
Jeffery D. Pilby
2319 Holly Court
Rocklin, California 95765

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Report on ditches and flooding
February 26, 2002

APPENDIX L E-Mail to Clark County Chris Horne approving the questionable Permit and calling the Petitioners "immigrants" and "feuding!"

APPENDIX M "Response to Citation" addressed to Judge John P. Wulle, Case No.01-2-04256-8 declaring and demanding Constitutional Rights to a jury trial petitioners had already paid for in December 2003. August 27, 2007.

APPENDIX N Petitioners filed a "Motion to Disqualify" Judge John Wulle on March 7, 2007.

APPENDIX O Transcript from May 30, 2007 in which Judge John Wulle states: "they (Fish's) may do what the easement permits them to do by the documents." Pg.55 line 5-6

APPENDIX P Original Deed from Edna M. Cook granting, "for the uses and purposes therein mentioned" March 24, 1980

APPENDIX Q Petitioners deed states; "and easement recorded under Auditors file No. 8003250116." May 25, 1995.

APPENDIX R Respondent Pilby's deed states: "Together with a 60 ft. easement for ingress, egress and utilities." November 3, 1993.

APPENDIX S Respondents Fish's deed states: "Together with a 60 ft. easement for ingress, egress and utilities." July 13, 1998. No right to anything that grows on it, to maintain it, etc.

APPENDIX T Petitioners are the landowners. (Undisputed fact) They pay the mortgage and taxes and are fined by Clark County if weeds grow unabated. They endure all the liabilities while being deprived of the benefits from their land.

APPENDIX U Land. In the most general sense, comprehends any ground, soil, or earth whatsoever; including fields, meadows, pastures, woods, moors, waters, marshes and rock. Blacks Law Dict. 5th Ed. 453

APPENDIX V Land. In law the word includes everything above and below the surface -- even gases, liquids and buildings. Modern Legal Usage 2nd Ed. 497

APPENDIX W Trespasser A person who enters on the property of another without any right, lawful authority or an express or implied invitation

REASON FOR GRANTING PETITION

Petitioner has been struggling with the overbearing misconduct of the Respondents for 15 years. W e have not had a moment of peace since we moved on this land in June 1, 1995.

We have done nothing wrong and do not deserve the abuse of our neighbors and their cohorts. This must come to an end! Our lives and our livelihood are at risk as documented by the numerous police reports, the discriminatory treatment by Clark County officials and the unjust constitutional violations we have suffered, even in a court of law. Are we to suffer until our last days from this unabated bullying. Just imagine to be accosted by a camera aimed at you constantly when we are outside. Yet, Cari Fish presented no evidence of any wrongdoing in the court. No pictures, no video, no nothing. Pure hearsay, made up fiction. Only the testimony of a proven liar. Proven with her own words from her own mouth, documented by the police reports and sworn testimony in a deposition. This is the evil of evils.

And the remedy is not to hire a lawyer, as I have done that. Several as a matter of fact. Spent plenty of money approaching $50,000.00 so far. And the good new is the Respondents aren't letting up! For in their silk purses is a bill waiting for me for the Respondents attorneys fees for $66,516. 71..

Prove to me this is America. Give this Citizen back his rights to feed his cattle from grasses he can grow on the land he pays taxes on.

I beseech you!

TABLE OF AUTHORITIES

COLWELL v ETZELL, 119 Wn. App 432, 438, 81 P. 2d 895 (2003)

BEEBE v SWERDA, 58 Wn. App. 375,384, 793 P 2d 442 (1990)

DRAKE v OWEN, 136 Wn App 1021 (2006)

WALTON v CAPITAL LAND, 252 Va. 324, 477 S.E. 2d 499 (1996)

RUPERT v GUNTER, 31 Wn. App. 27, 31, 640 P. 2d 36 (1982)

ALDERWOOD ASSOCS. v WASHINGTON ENVTL. COUNCIL, 96 Wn, 2d 210, 635, P. 2d 108 (1981)

RCW 4..24. 630

TITLE 18 USC

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below. The opinion of the highest state court to review the merits appears at Appendix A to the petition.

The Washington State Court of Appeals. That it be overturned or remanded back to court with a different judge in a venue granting a fair and unbiased trial with due process. That Petitioner be granted an interpreter to define the process since Petitioner has spent $41,000.00 seeking an honest attorney to provide honest legal services to no avail. That Petitioner proceeds Sui Juris in accordance with the Judiciary Act of September 24, 1789, Section 342, FIRST CONGRESS, Sess. 1, 20, 1789. Appendix D.

OPINION BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the petition.

The Washington State Court of Appeals and is an unpublished opinion on Case No. 36877-3-11 by Judge Schultheis, Judge Bridgewater and Judge Hunt *July 14, 2009. A majority of the panel* determined that this opinion would not be printed in the Washington Appellate Reports but be filed in a public record to comply with RCW 2.06. 040.

The opinion of the state trial court appears second as Appendix B to the petition.

The Superior Court of Washington
County of Clark

The matter was heard on May 30, 2007 by Judge John P. Wulle without benefit of a jury as paid for in December 2003 and before beginning demanded by the petitioners as their Constitutional right. The respondents were not in the court room when trial began. There is no decision or opinion filed as of this date. Appendix H - L

STATEMENT FOR THE

BASIS OF JURISDICTION

1. The date on which the highest court decided my case was December 1, 2009 at which time the Washington Supreme Court denied petitioners Petition for Review and Motion for Oral Argument., Case No. 83460-1. Dept.11 of the Court was composed of Chief Justice Alexander and Justices Madsen, Chambers, Fairhurst and Stephens. APPENDIX C

2. The jurisdiction of this court is invoked under 28 USC 1257 (a)

3. The Supreme Court also has a Fiduciary Duty to the sovereign citizens of the United States of America, that U.S.Courts of Law conduct themselves in a lawful fashion, review their conduct when petitioned for misconduct, and insure that the laws of the United States of America are strictly enforced for the good of the public.

CONSTITUTIONAL AND STATUTORY

PROVISIONS INVOLVED IN THE CASE

1 No state or federal law exists to justify forcing-away Petitioners property, uncompensated and involuntary conveyance of benefits to the adjacent neighbors as ordered unlawfully by these courts and is in actuality collusion, extortion, theft, etc. Appendix T- U- V.

2. THE BILL OF RIGHTS IN THE UNITED STATES CONSTITUTION guarantees the following:

FIRST AMENDMENT in part states:
"and to petition the Government for a redress of grievances."

FOURTH AMENDMENT states:
"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

FIFTH AMENDMENT in part states
: "nor be deprived of life; liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

SEVENTH AMENDMENT states:

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law."

EIGHTH AMENDMENT states:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

3. THE CONSTITUTION OF THE UNITED STATES guarantees the following:

THIRTEENTH AMENDMENT Sect. 1 states in part:

"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or anyplace subject to their jurisdiction."

FOURTEENTH AMENDMENT Sect. 1 states in part:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

4 FRAUD AND FALSE STATEMENTS
TITLE 18 USC 1001 STATEMENTS or entries generally:
(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--
(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
(2) makes any materially false, fictitious, or fraudulent statement or representation; or
(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
shall be fined under this title or imprisoned not more than 5 years, or both.

5. FEDERAL RULES OF CIVIL PROCEDURE
RULE 11 (b) Representations to the court ,
"By presenting the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances---

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief..

STATEMENT OF THE CASE

The petitioners would first like to inform the court of the deliberate mismanagement of this case by attorneys who were hired to represent their interests and the gross injustice in the Washington courts. We have suffered from this situation 15 yrs..

The Appellate Brief filed by petitioner's attorney Charles H. Buckley WSBA # 09048 was grossly inaccurate, fiction and filed without our approval, notice, permission or review which poisoned the appeal process. The brief was prepared by Susanna L. Southworth WSBA #. 35687, an associate attorney who was obviously not aware of the true facts and did not talk to the Petitioners about the allegations in the case. Appendix F-G

WE WALKED INTO A HORNETS NEST

We purchased our property in May 1995 from the previous owners; the Coffman's who were having problems with the adjacent neighbor Jeffery Pilby. Petitioners did not know of the situation when the deed was signed. They moved in on June 1, 1995 and by the next day June 2, 1995,

Respondent Pilby was digging holes along the roadway on the easement owned by the Petitioner. His actions illegally removed 480 cubic yards of top soil which he dumped on his property. He knocked down a fence that is still buried in the ground. He caused flooding on Petitioners property and neighbors, Sammie M. Rhyne, Anna Scott, Judy and John Webster's property as well. The Coffman's stated that there wasn't any flooding when they lived there; before Respondent Pilby dug the holes. Linda Coffman told a friend that her husband had a heart attack from the constant aggravation putting up with Respondent Pilby's bullying as a neighbor and sent her this letter.

To whom it may concern:
App. in 1993 we bought acreage at 18716 N.E. Davis Rd, Brush Prairie, WA.
On our property there was a 60 foot easement for ingress and egress that our neighbor Jeff Pilby used.
We grew hay for our cows down each side of the easement. Jeff brought in a huge mower and cut it all down on two different occasions.
On or approx. May 25, 1995 papers were signed selling this property to Victor, the following two days Jeff Pilby brought in heavy equipment again and started grading the easement without permission.
In the time that we lived at this address we never had flooding of any kind,! Linda Coffman

Petitioner has a barn that floods and his animals stand in the water for lack of dry shelter. He has videos of the water running through the property like a river. He could be using his land to grow food for his clients in the vital business of the foster care home for the elderly.

THE FLOODING CONTINUES.

Petitioners called on Clark County Department of Community Development to enforce the code review process for land for a grading permit which requires the landowner's signature and was an absolutely necessary requirement for grading. They came out and did absolutely nothing! They could have stopped the damages by insisting on the required permit which the Petitioner would never have signed, instead through wanton Dereliction of Duty by a public body, aided and abetted the injury causing the Petitioners years of further damage, harassment and expense. The following year on July 29, 1996 Clark County issued a grading permit GR960124 forged and falsified by Respondent Pilby who also made a false statement in the diagram showing the width of the trenches. Respondent Pilby in 1995 had dug 20 ft. wide long holes down each side of the roadway est. 900 lineal feet causing damage, repair estimated Dec. 5, 2001 at $7,205.00 min. by Nutter Corporation.

Petitioners hired William J Sobolewski, P.E. a Consulting Engineer to do a professional analysis of the property on January 30, 2002 in the heart of the rainy season to determine a solution to the flooding. His extensive report is dated February 26, 2002. To summarize, his advice was fill in the trenches to stop the flooding! Appendix K

REPAIRS REMAIN UNDONE

Respondents Fish have prevented repairs by hook and by crook. Respondents Brian M. Fish & Cari D. Fish, husband and wife purchased Respondent Pilbys property on July 13, 1998, Statutory Warranty Deed # 3001459 at 18900 N.E.Davis Road. Same Property, Same Deed

Same easement providing ingress, egress and utilities. Nothing more.

Respondent Cari Dene Fish in a Deposition on November 10, 2003 under oath answered Mr. Mitchelson's question:

Q Okay. Did you tell the truck driver the area in which he was dumping the dirt was your property, not the Muresan's property ?

A. I do not recall. That is not my property.

On June 28, 2003 Respondent Cari Fish called Officer Richard Farrell to the property because she had placed a note on a vehicle stating:

"This is a private driveway easement. Please don't park long, Thanks"

The officers report # 2003182574 said, "Neighbor on her easement and she asked him to move his truck and he refuses, and swore at her."

Petitioner got a Protective Order against the Respondents Fish on July 2, 2003 which stated:

"On June 28, 2003, I, Victor and my son John were walking on my property installing a gate for access from the easement to my property. My truck was parked on the side of the road, when Mr. Fish and his wife came close to us with a video camera, filming to provoke us. Over 30 minutes into filming us, constantly watching us work, telling us to move the truck, because I didn't have any right being there, on their property. She said she would call the towing truck, and get the police involved. She even went as for as making racist remarks that we are not Americans, and that she was born here, after 45 minutes, later, she would not leave us alone, making fun of us. They even brought their dog out on us."

This testimony was given under penalty of perjury by the Petitioner, taken from that Order

Respondent Cari Fish swears under oath in a Deposition that it is not her land. Her own testimony exposes her as a liar. The subject of railroad ties has come up in this frivolous law suit filed by Respondents Fish. Respondent Pilby put out a brochure advertising his property for sale saying:

> "I have much knowledge, pictures during construction, and will point out all the details that no real-estate agent could ever start to tell."

Respondent Pilby says the 500 foot road is not part of the acreage: It is a 60-foot wide easement with complete ingress and egress with provisions for utilities written into the property trust deed, He also says he has 125 railroad ties on site to aid in landscaping. No Bill of Sale has been produced as evidence for the personal property included in the sale. According to the frivolous lawsuits there are 125 railroad ties along the roadway too. Couldn't be the same railroad ties or they would be rotten by now. Would you dig up rotten railroad ties and use them in landscaping? Or do you now have 250 railroad ties? 125 buried around the roadway and 125 to be used for land-scaping.

The shattered creditability of Respondent Cari Fish evidenced from her own testimony in the Deposition and police report previously stated why would anyone take her word about anything? In a court of law facts speak louder than words and the preponderance of evidence is king!

Petitioners have been accused of taking the railroad ties to their church. They were not attending and did not have a church at the time the so- called "confession" fell on Respondent Brian Fish's ears. Petitioner Vicki says this fantasy

conversation never took place! To say that one would steal something and then take it to a church is ridiculous.

As ridiculous as the Appellate Brief written for the Petitioners by Buckley and Southworth that wrote every lie as truth and reading it makes you vomit at the thought of the harm they have done to the Petitioners lives. The Statement of the Case says:

(1) The easement is a roadway which runs 60 feet wide and 500 feet long.

Correction: The easement runs 60 feet wide and 500 feet long to the center of Davis Road with a roadway 12 feet wide when the Petitioner bought the property and Clark County Code designates 12 feet wide access for a single family home. .

(2) Ditches run on the easement and span appx. 20 feet in width.

Correction: There were no ditches on the easement when the Petitioner bought the property and only got there when Respondent Pilby unlawfully dug the holes and stole the soil with Clark County personnel aiding and abetting the theft by collusion

(3) Jeffery Pilby obtained a grading permit in 1996, to install the ditches that run on either side of the roadway.

Correction: Jeffrey Pilby dug the trenches one year earlier starting on June 2, 1995 by criminally trespassing on Petitioners property and obtained that false permit by committing fraud because only the landowner can take out a permit and couldn't have done any of the damage without the complicity of Clark County employees. The same organization that appointed Judge John P. Wulle to the bench.

(4).Defendants filled the ditches in with debris and topsoil as well as a culvert.

Correction: Petitioners never put debris in the trenches, the culvert was an attractive nuisance, dangerous and useless, (required by law to protect anyone who could get hurt by it) and Petitioners can show invoices where they purchased top soil to repair Respondent Pilbys Plunder.

(5) Plaintiffs were concerned about flood water flowing over the road.

Correction: Plaintiffs should have thought of that when they purchased the property because the previous owner created that cesspool of flowing water and all the Petitioners have been trying to do is fix it. They end up in court defending themselves against Respondents Fish's frivolous lawsuits trying to get it done.

(6) Defendants removed appx. 40-50 railroad ties lining the easement.

Correction; Petitioners own the land; in law the word includes everything above and below the surface-even gases, liquids and buildings.
Modern Legal Usage 2nd Ed. 497
No petitioners didn't take rotten railroad ties. Only relocated 4 that were creating a hazard.
Land in the more general sense, comprehends any ground, soil, or earth whatsoever; including fields, meadows, pastures, woods, moors, waters, marshes and rock. Blacks Law Dict. 5th Ed. 453

(7) Plaintiffs filed claims against Defendants for Waste, Trespass and Declaratory Judgment on October 24, 2001

Correction: Petitioners cannot "trespass" their own property, where is the law? They cannot "waste" their own belongings, where is the law? Meanwhile Respondents Fish are cutting and keeping all grass

growing on the petitioners land. The petitioner is paying taxes at $5,000.00 a year including taxes on

(8) On November 9, 2001, the trial court heard Plaintiff's Motion for Preliminary Injunction and Defendant appearing not, granted Plaintiffs Motion.

Correction: On November 9, 2001 Petitioner was in Europe visiting his very ill father and his wife responded and asked for a continuance..

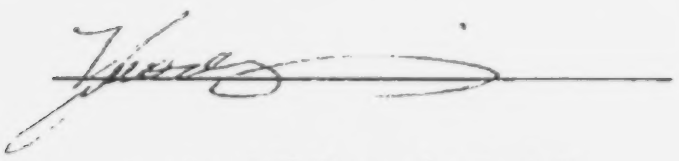
Denise Lukins, Respondents attorney wasn't going to delay and so to win a case she chose to deny the Petitioners a trial by due process.

Please refer to the Appendix which should enlighten you further! Thank You.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: MARCH 1, 2000

WRIT OF CERTIORARI APPENDICES

APPENDIX A
DATE JULY 14, 2009
CASE NO. 36877-3-11

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON --- DIVISION 11

UNPUBLISHED OPINION

BRIAN AND CARI FISH,
Husband and Wife
Respondents,
V
VICTOR MURESAN and VIORECA MURESAN
Husband and Wife
Appellants,

JEFF PILBY and JANE DOE PILBY,
Husband and Wife,
Respondents

Schultheis, J. ---- In the easement dispute, Victor and Vioreca Muresan, pro se, appeal a judgment awarding Brian and Cari Fish damages and injunctive relief.. They contend the trial erred
(1) dismissing their counterclaims against the Fishes' and their third party complaint against Jeffrey Pilby,
(2) finding the Muresan's trespassed in the easement,
(3) awarding damages to the Fishes', and
(4) enjoining the Muresan's from interfering with the Fishes' right to maintain the easement.

They also contend their actions were justified under the common enemy doctrine. We reject their contentions and affirm.

FACTS

The parties own adjoining pieces of land. The Muresan's purchased their parcel in 1995, which is burdened by an approximately 500-foot long and 60-foot wide easement that benefits the Fishes' property. The fishes' purchased their property in 1998 with an easement for ingress egress and utilities.

In 1993, when Mr. Pilby, the Fishes' predecessor in interest, purchased the property, the easement did not have a road. Shortly thereafter, he constructed a 20 – foot road wide gravel road to access the home he was building. In 1996, he dug ditches on the sides of the easement to prevent water from flowing over the easement and washing away the gravel.

Around 2001, the Muresan's began filling in the ditches with pieces of concrete and asphalt. They also covered a culvert and removed railroad ties that were used to shore up the easement road. In October 2001, the Fishes' learned that the Muresan's had applied for a grading permit to fill in the ditches with topsoil. In response on October 24, the Fishes' filed a motion for a preliminary injunction and sued the Muresan's for trespass and waste. The complaint alleged that the Muresan's prevented the Fishes' from maintaining the easement road by threatening them, filling in the drainage ditches, and removing railroad ties. The Fishes' asked for a declaratory judgment confirming their right to maintain the easement and

enjoining the Muresan's from interfering with that right. They asked for damages for the cost of re moving the debris and replacing the railroad ties.

On November 9, 2001, the court issued a preliminary injunction, enjoining the Muresan's from placing dirt or debris in the drainage ditches. The injunction stated,

> Plaintiffs Brian and Cari Fish have shown they have a clear right to use of the easement, established roadway and the ditches located on both sides of the established roadway, all without unreasonable interference or obstruction from defendants; that they have a well-founded fear of immediate invasion of that right that defendants' actions, including obstructing maintenance of the ditches and placing of the dirt and other material in the ditches, have and will result in actual and substantial injury.

Clerk's Papers (CP) at 1-2.

In December 2001, the Muresan's, pro se, wrote a letter to the trial court asking it to withdraw the injunction. The record does not contain the court's response, if any. At some point, the Fishes' filed for summary judgment. In a December 2004 declaration filed in response to the motion, Mr. Muresan stated that his property flooded after Mr. Pilby dug the drainage ditches. He also complained that Mr. Pilby harassed him. He stated that in 2001 he applied for a permit to fill in the ditches and began to do so. He claimed his efforts were hampered when Ms. Fish "trespassed" on the easement and told him he had no business there. CP at 121. Apprently, the Muresan's' counterclaims were dismissed in a March 15, 2006 order granting partial summary judgment to the Fishes.

The case was scheduled for trial on May 30, 2007. The Muresan's' appeared pro se and asked the court to lift the 2001 injunction. The trial court responded that their request was not properly before the court. The following exchanged occurred:

THE COURT: This is the date and time for a trial on a series of claims that were filed back in "01. The cause of action has been well known to all the parties. This Court has done everything it can to get this case resolved as quickly as possible. I am prepared to proceed to bring the jury up and let's get a jury selected.

MR. MURESAN; No. I gotta go home.

MS. MURESAN; We gonna go, Your Honor.

THE COURT: You're leaving?

.....

MS. MURESAN: And I don't think you guys have any jury. I don't believe it.

.....

THE COURT: I have a- I have a jury pool—

MS. MURESAN: Supposed to be here from the beginning.

....

THE COURT: If you want to sit here for a second, I'll bring them up.

MR. MURESAN: Okay. (Exiting courtroom.)

MS. MURESAN: You give us one day to prepare for this trial, one day, which was yesterday....That's against the law.

And I have a right here if you please sign the injunction. Can you please sign it so we can fix the property? That's all I'm asking from you.

THE COURT: I have a jury pool and a jury waiting, they're ready to come up here—

MS. MURESAN:.....Why is it so hard to sign our injunction ? It's right here, if you want to sign it, we can fix the property. That's all I'm asking for—

.....

THE COURT: The motion is not properly before the court.

MS. MURESAN: May (indiscernible)

THE COURT: You're here for a jury trial....I have 30-something jurors who have been taking time out from their personal lives to come here and hear the facts of this case and decide.

.....

THE COURT: I can bring them up right now and we can get this case going.

MR. MURESAN: Your Honor, if it is hard for you to let us fix the property---

THE COURT: (To clerk) Go bring the jury pool up, Katherine, please. Let's proceed.

MR. MURESAN: You have a nice day.

(Both defendants leave the courtroom.)

THE COURT: Let the record reflect that the defendants are voluntarily walking out of this courtroom.

Report of Proceedings (RP) at 11-14

The Fishes' waived a jury trial and the case proceeded without the Muresan's. Mr. Fish testified that when he purchased his property in 1998, the easement road had already been constructed. He stated that at one point the Muresan's asked him to move the road but he declined. He also testified that around 2001, the Muresan's threw pieces of concrete and asphalt into the drainage ditches along the easement and covered culverts, which

prevented water from passing through. When Mr. Fish asked the Muresan's to stop covering the culverts, they responded that they could do whatever they wanted with their property. Mr. Fish also testified that Mr. Muresan refused to let him mow the grass on the easement. As a result, the grass had not been mowed since 2001.

As to the waste claim, Mr. Fish testified that the Muresan's removed about 45 railroad ties from the easement. He explained that when he purchased the property the easement had 125 railroad ties. When Mr. Fish confronted the Muresan's about the railroad ties, they told hem they were using them at the church.

The Muresan's' trespass claim was addressed. Mr. Fish testified that the water flow had not increased in the area since he purchased the property.

The court dismissed the Muresan's claims for failure to present any evidence, stating, "The evidence that was presented in court is uncontroverted. I have to accept it as undisputed facts." RP at 54. The court entered the following pertinent findings of fact:

9. Defendants Failure to Participate in Trial. All parties appeared for trial on May 30, 2007, however, Defendants refused to participate in the trial and left the courthouse prior to the commencment of the trial and the impaneling of the jury.

10. Jury Dismissed. As a result of the Defendants failure to participate in the trial, the Court dismissed the jury from service.

11. Plaintiffs Claims against Defendants. Due to the Defendants failure to participate in the trial and failure to provide evidence defending

against the claims asserted against then, Plaintiffs testimony and pleadings were accepted and their claims against Defendants asserted in their complaint were affirmed by the Court.

12. Defendants Claims against Plaintiffs. Due to the Defendants failure to participate in the trial and failure to provide evidence in support of their claims asserted against Plaintiffs, their claims set forth in their Answer and Counterclaim of Defendants and Amended Answer, Affirmative Defenses, Counterclaim, and Third Party Complaint were denied.

13. Defendants Claims against Third-Party Defendant. Due to the Defendants failure to participate in the trial and failure to provide evidence in support of their claims asserted against Plaintiffs, Their claims set forth in their Amended Answer, Affirmative Defenses, Counterclaim, and Third-Party Complaint were denied

14. Plaintiffs damages for Waste claim. Plaintiffs incurred damages pursuant to their Waste claim against Defendants in the amount of $622.29 due to the Defendants removal of approximately 40 railroad ties from the road /easement. Said figure is calculated as follows....40 railroad ties @ $12.97 per tie, plus $59 delivery fee. Pursuant to RCW 4..24.630, said amount should be trebled (tripled) to $1,866.87.

15. Declaratory Judgment. The Court finds that Plaintiffs shall have exclusive rights to maintain the road and easement across the Defendants property, and that Defendants shall not interfere with said right.

CP at 7.

The Muresan's, pro se, appeal.

ANALYSIS

The Muresan's first argue that the trial court erred in dismissing their counterclaims and third-party complaint. They argue, "The trial court would never have found for the Plaintiffs had he heard all of the facts of this case." Amended Br.of Appellants at 13. The Muresan's claim these facts would have included evidence that Mr. Pilby criminally trespassed on their property and stole 400 cubic yards of top soil, that Mr., Pilby forged their names on a grading application, and that the ditches dug by Mr. Pilby have caused "rampant flooding" on their property. Id at 14. They ask this court to reverse the trial court's decision and lift the permanent injunction "because of the criminal conduct of Jeffrey Pilby." Id. at 32. They also ask that we reverse and remand the case for a hearing on their counterclaims and third party complaint.

The fatal flaw in their argument is the absence of any evidence to support their factual claims. The Muresan's overlook the key fact that by refusing to participate in the trial, they produced no evidence to support their claims of trespass and waste. They complain that the trial court did not hear all the facts of the case; however, when presented with the opportunity to finally present their side of the case to the jury, they chose to leave the courtroom on the day of trial. With no evidence to support their claims, the trial court did not err in dismissing the Muresan' claims against Mr. Pilby and the Fishes'. For the same reason, there is no basis to lift the injunction or remand the case for a hearing on their counterclaims. The Muresan's had the opportunity to present their case on May 30, 2007 and declined to do so.

The Muresan's next argue that insufficient evidence supports the court's finding that they trespassed on the Fishes' property. They argue that since Defendants remained on their property when filling the ditches(holes) and removing the 4 railroad ties from the roadway easement to prevent an attractive nuisance, they did not trespass on Plaintiffs' property.." Id at 15.

When a trial court has weighed the evidence, our review is limited to determining whether the court's findings are supported by substantial evidence and, if so, whether the findings support the court's conclusions of law and judgment. Panorama Vill. Homeowners Ass'n v. Golden Rule Roofing, Inc., 102 Wn. App. 422, 425, 10 P.3d 417 (2000) "Substantial evidence exists where there is a sufficient quality of evidence in the record to persuade a fair- minded, rational person of the truth of the finding." State v Hill, 123 Wn. 2d 641, 644, 870 P. 2d 313 (1994) "The party challenging a finding of fact bears the burden of showing that it is not supported by the record." Panorama Vill. 102 Wn. App. at 425.

The Muresan's assign error to finding of fact 11, in which the court accepted the Fishes' pleadings and testimony because the Muresan's refused to participate in the trial and produce any evidence to support their claims. We conclude that substantial evidence supports this finding. The Fishes supplied ample testimony that the Muresan's trespassed upon the easement. Mr. Fish testified that the Muresan's filled in the ditches with debris from their house remodel and intended to fill in the remainder with topsoil. He further testified that after the Muresan's filled in the ditches and cover-

ed a culvert, water began to flow onto the easement road and wash away the gravel. In contrast, as indicated in detail above, the Muresan's refused to participate in trial and consequently failed to produce any evidence in support of their claims. The court's finding supports the court's conclusion of law that the Muresan's trespassed on the easement. See Bradley v Smelting & Refining Co., 104 Wn.2d 677, 693, 709 P 2d 782 (1985) (a cause of action for trespass exists where there is an intrusive condition on a person's land causing actual harm to that person's property)

Next the Muresan's contend the trial court erred in finding that they took 40 railroad ties from the easement, arguing, "There is no evidence that the used railroad ties that the (Muresan's) were charged with converting were present when Plaintiffs Brian and Cari Fish completed the purchase of the property on July 13, 1998." Amended Br. of Appellants at 16. The Muresan's Also argue that the court erred in awarding damages under RCW 4.24. 630 for the railroad ties. Quoting Colwell v. Etzell, 119 Wn. App. 432, 439, 81 P.2d 895 (2003) for the premise that the servient owner has the right to use his or her land for any purpose not inconsistent with the purpose of the easement, the Muresan's argue that RCW 4.24.630 does not apply because the Fishes' do not own the property on which the easement is located and therefore the Muresan's are entitled to use the easement for any purpose that does not interfere with the Fishes' use. The Muresan's reason that in the absence of any evidence that their actions prevented the Fishes from using the easement, the Fishes' claim under RCW 4.24.630 must fail.

RCW 4.24.630 (1) provides for treble damages, attorneys fees, and other costs if a person "wrong fully causes waste or injury to the land, or wrong fully injures personal property or improvements to real estate on the land" of another. For purposes of the statute, a person acts "wrongfully" if the person intentionally and unreasonably commits an act or acts while knowing, or having reason to know, that he or she lacks authorization to so act." RCW 4.24.630 (1) Damages under this statute include "the market value of the property removed or injured." Id.

Here, the trial court found that the Fishes' incurred damages under RCW 4.24.630 pursuant to their waste claim based on the Muresan's removal of 40 railroad ties. Substantial evidence supports this finding. The uncontroverted testimony at trial was that Mr. Pilby placed 125 railroad ties on the easement. These ties were present when the Fishes' purchased the property from Mr. Pilby. When Mr. Fish confronted the Muresan's about the disappearance of the railroad ties, they told him they were going to use them at their church. In view of this evidence, the Muresan's must fail.

The Muresan's citation to Colwell does not help them. In that case, a landowner took steps to remedy increasing damage to his land caused by runoff from an uphill adjacent parcel by installing culverts and ditches. A neighbor, who possessed an easement for passage over the land, sued for damages under the theory that the owner had damaged the neighbors' interest in the easement. Division Three of this court reversed the trial courts award of damages under RCW 4.24.630 because there had been no trespass on the plaintiff's land. Colwell, 119 Wn App. at 439.

This case is distinguishable. The record establishes that the Muresan's, who had every reason to know that they "lacked authorization to so act," intentionally and unreasonably, removed railroad ties from the easement. RCW 4.24.630 (1). While they are correct that as servient owners they have the right to use their land in any way not inconsistent with its use as an easement, this use does not include the removal of railroad ties used to support the easement. Again, because the Muresan's left the courtroom on day of trial and failed to produce any evidence to contradict the Fishes and Mr. Pilby's testimony, the evidence supports the court's award of damages under RCW 4.24.630.

The Muresan's also argue that their actions were justified under the "common enemy doctrine" because they filled in the ditches in a good faith effort to protect their property from excessive water runoff. However, we need not address this claim. The Muresan's did not raise this claim below and because they refused to attend trial, they provided no testimony that would potentially support this claim. See RAP 2.5 (a) (appellate court may refuse to review any claim of error which was not raised in the trial court) Muresan's failure to raise the "common enemy doctrine:" below precludes our review of the issue.

Finally, the Muresan's contend that the trial court erred in granting the Fishes' the exclusive right to maintain the easement and enjoining the Muresan's from interfering with that right. A suit for an injunction is an equitable proceeding addressed to the court's sound discretion, which it exercises on a case- by- case basis. Standing Rock Homeowners Ass'n v Misich, 106 Wn. App. 231,

240, 23 P. 3d 520 (2001) We give great deference to the trial court, interfering in its decision only where it bases its ruling on unreasonable or untenable grounds. Lowe v Double L. Props., Inc., 105 Wn. App. 888, 893, 20 P. 3d 500 (2001)

Here, the uncontroverted evidence shows that the Muresan's obstructed the Fishes' attempt to maintain the easement road by filling in the drainage ditches, covering culverts, removing railroad ties, and refusing to let Mr. Fish mow the area. Furthermore, Mr. Fish testified that the Muresan's themselves had not maintained the easement since 2001. In view of this evidence, the trial court did not abuse its discretion in enjoining the Muresan's from interfering with the Fishes' right to maintain the easement.

CONCLUSION

The trial court correctly dismissed the Muresan's counterclaims and third party complaint based on the absence of any evidence to support the Muresan's factual claims. We also conclude that the trial court properly (1) found that the Muresan's trespassed on the easement, (2) awarded damages to the Fishes' based on the Muresan's removal of the railroad ties, and (3) enjoined the Muresan's from interfering with the Fishes' right to maintain the easement. Finally, we reject the Muresan's argument that their actions are justified under the common enemy doctrine. Accordingly, the judgment of the trial court is affirmed.

Attorney Fees

The Muresan's ask for attorney fees pursuant to RAP 18.1. They appear to argue that they are entitled to attorney fees because the appeal was necessary to dissolve the wrongfully issued injunction against them. Their argument is without merit. As the nonprevailing party, the Muresan's are not entitled to attorney fees. Dawson v Daly, 120 Wn. 2d 782, 800, 845, P.2d 995 (1993)

Motion to Supplemental Appellants' Brief

On April 24, 2009, the Muresan's filed a motion to supplement their brief with an additional argument to their conclusion. In this paragraph, they reiterate issues they raised in their initial brief. Specifically, they ask us to dissolve the injunction against them, enjoin the Fishes' from interfering with the Muresan's use of the easement, dismiss the waste and trespass claims against the Muresan's, and award the Muresan's attorney fees. We grant the motion to supplement their brief. However, we deny their requests, noting that we have already disposed of these claims above.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

_____

Schultheis, J.

WE CONCUR;

_____

Bridgewater, J.

_____

Hunt, J.

APPENDIX B
DATE MAY 30, 2007
CASE NO. 01-2-04256-8

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK

NO OPINION OR FINAL ORDER ON FILE

BRIAN and CARI FISH
Husband and Wife,
Respondents,
V.
VICTOR MURESAN and VIORECA MURESAN
Husband and Wife,
Appellants,

JEFF PILBY and JANE DOE PILBY
Husband and Wife,
Respondents.

JUDGE JOHN P.WULLE

NOTE; The court clerk checked the file February 26, 2009 and found no Opinion or Final Order has been entered in this case. It was not sent to the Appellate Court for the Petitioners Appeal.
The clerk last checked the file on June 25, 2007.
Respondents did not file a Brief in the above case.

THE STARK TRUTH

The stark truth is this in not a case about 40 railroad ties with an inflated value of $1,866.87 that were in dirt for years and are now "missing."
THIS SCHEME IS TO GRAB LAND AND RUN UP ATTORNEYS FEES,

THE PETITIONERS ATTORNEY FEES
PAID FIFTY THOUSAND DOLLARS TO DATE

DECLARATION

Grant C. Broer declares under the penalty of perjury as follows:

I am the attorney for the plaintiffs, Brian and Cari Fish, in the above- captioned matter. Attached hereto are true and accurate copies of the Plaintiffs billing statements totaling $5,533.92 through July 31, 2007, for Broer & Passannante, P.S. and $37,745.50 for Lindsey Hart Neil & Weigler.

It is anticipated that another 2.5 hours of attorney time will be expended in preparation for and attendance of the hearing in this matter. Accordingly, Plaintiffs request total judgment against the Defendants in the amount of $43,754.42

I am the attorney for the Third-Party Defendant, Jeff Pilby, in the above- captioned matter. Attached hereto is a true and accurate copy of billing statements totaling $8,023.50 through July 31, 2007.

It is anticipated that another 2.5 hours of attorney time will be expended in preparation for and attendance of the hearing in this matter. In addition, Pilby seeks recovery of his personal expenses and time associated with this matter as set forth on the attached statement dated June 28, 2007, in the total amount (exclusive of attorneys fees and costs) of $6,388. Accordingly, Pilby requests total judgment against the Defendants in the amount of $14,886.50.

Signed at Vancouver, WA.. on August 27, 2007.

_____

Grant C. Broer, WSBA #25588

Attorneys Fees and Costs

APPENDIX C
DATE DECEMBER 1, 2009
CASE NO. 83460-1

THE SUPREME COURT OF WASHINGTON

ORDER
DENIAL OF REVIEW AND ORAL ARGUMENT

BRIAN and CARI FISH
Husband and Wife,
Respondents,
V
VICTOR and VIORECA MURESAN
Husband and Wife,
Petitioners,

JEFFREY PILBY and JANE DOE PILBY,
Husband and Wife,
Respondents,

Department 11 of the Court, composed of Chief Justice Alexander and Justices Madsen, Chambers, Fairhurst and Stevens, considered at its December 1, 2009, Motion Calendar, whether review should be granted pursuant to RAP 13.4 (b), and unanimously agreed that the following order be entered.

IT IS ORDERED:
That the Petition for Review is denied and the Petitioner's motion for oral argument is denied.

DATED at Olympia, WA. this 2nd day of Dec, 2009
For the Court

CHIEF JUSTICE ALEXANDER

SUI JURIS

THE TRUTH IN THE RECORD.

"And be it further enacted. That no summons, writ, declaration, return, process, judgment, or other proceedings in civil cases in any of the courts or the United States, shall be abated, arrested, quashed or reversed, for any defect or want of form, *but the said courts respectively shall proceed and* give judgment according as the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defects or want of form in such writ, declaration, or other pleading, returns process. judgment or course of proceeding whatsoever, except those only in cases of demurrer, which the party demurring shall specially sit down and express together with his demurrer as the cause thereof. And the said courts respectively shall and may, by virtue of this act, from time to time, amend all and every such imperfections, defects and wants of form, other than those only which the party demurring shall express as aforesaid, and may at any, time, permit either of the parties to amend any defect in the process of *pleadings upon such conditions as the said courts* respectively shall in their discretion, and by their rules prescribe (a)

Judiciary Act of September 24, 1789,
Section 342 FIRST CONGRESS,
Sess. 1, ch. 20, 1789

"Due Process provides that the "rights of pro se (Sui Juris) litigants are to be construed liberally and held to less stringent standards then formal pleadings drafted by lawyers; if court can reasonably read pleadings to state valid claim on which litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence *construction, or litigants unfamiliarity* with pleading requirements."

Spencer v Doe, (1998)

; Green v Branson (1997)

Boag v McDougall (1982)

Haines v Kerner (1972)

" Right to proceed pro se (Sui Juris) is fundamental statutory right that is afforded highest degree of protection"

DEVINE V INDIAN RIVER COUNTY SCHOOL BD., 11TH CIR. 1997

APPENDIX E
DATE AUGUST 31, 2007
CASE NO. 01-2-04256-8

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

BRIAN FISH and CARI FISH,
Husband and Wife,
Plaintiffs,
V
VICTOR MURESAN and VIORECA MURESAN,
Husband and Wife,
Defendants / Third-Party Plaintiffs,
V
JEFF PILBY and JANE DOE PILBY,
Husband and Wife,
Third-Party Defendants.

This matter having come on regularly for hearing on May 30, 2007, and the Court having considered the testimony of witnesses, the exhibits admitted herein, the arguments of counsel together with the records and files herein, now makes and enters the following:

FINDINGS OF FACT

1. Identity of Plaintiffs: Plaintiffs, BRIAN FISH and CARI FISH (hereinafter "Plaintiffs") are Husband and wife and residents of Clark County, Washington, and entitled to sue and be sued in this state.

2. Identity of Defendants / Third-Party Plaintiffs: VICTOR and VIORECA MURESAN (hereinafter "Defendants") are husband and wife and residents of Clark County, Washington, and entitled to sue and be sued in this state.

3. Identity of Third- Party Defendant
Third-Party Defendant Jeff Pilby (hereinafter "Third-Party Defendant") *is a single man and* resident of California, and was predecessor in interest to the Plaintiffs as to real property located at 18909 N.E.Davis road, Brush Prairie, Washington, and therefore is entitled to sue and be sued in this state.

4. Jurisdiction and Venue:
This court has jurisdiction of the person of the parties herein and of this action pursuant to statute in that the subject matter of this action involves tort claims asserted between the parties arising out of real property interests situate in this county and state.

5. Plaintiffs Claims against Defendant:
Plaintiff asserted claims against the Defendant for Waste, Trespass and Declaratory Judgment, as further described in the Complaint for Trespass filed with the Court on October 24, 2001.

6. Defendants Counterclaims against Plaintiffs.
Defendant asserted counterclaims against Plaintiffs for Waste and Trespass, as further described in the Answer and Counterclaim of Defendants filed with the Court on December 6, 2001, and in the Amended Answer, Affirmative Defenses, Counterclaim, and Third-Party

Complaint filed with the Court on April 2, 2002.

7. Defendants Third-Party Claims against Third-Party Defendant.
Defendant asserted claims against Third-Party Defendant for Waste and Trespass, as further described in the Amended Answer, Affirmative Defenses, Counterclaim, and Third-Party Complaint filed with the Court on April 2, 2002.

8. Defendants Claims for Waste Dismissed.
The Order granting Partial Summary Judgment Filed with the Court on March 15, 2006, dismissed Defendant's Waste claims asserted in their Answer and Counterclaim of Defendants filed with the Court on December 6, 2001, and in the Amended Answer, Affirmative Defenses, Counterclaim, and Third-Party Complaint filed with the Court on April 2, 2002.

9. Defendants failure to Participate in Trial.
All parties appeared for trial on May 30, 2007, however, Defendants refused to participate in the trial and left the courthouse prior to the commencement of the trial and the empanelling of the jury.

10. Jury Dismissed.
As a result of the Defendant's failure to participate in the trial, the Court dismissed the jury from service.

11. Plaintiff's Claims against Defendant.
Due to the Defendants failure to participate in the trial and failure to provide evidence defending against the claims asserted against them, Plaintiff's testimony and pleadings were accepted

and their claims against Defendant asserted in their Complaint were affirmed by the Court.

12. Defendant's Claims against Plaintiffs.
Due to the Defendant's failure to participate in the trial and failure to provide evidence in support of their claims asserted against Plaintiff's, their claims set forth in their Answer and Counterclaim *of Defendants and Amended Answer, Affirmative* Defenses, Counterclaim, and Third-Party Complaint were denied.

13. Defendant's Claims against Third-Party *Defendant.*
Due to the Defendant's failure to participate in the trial and failure to provide evidence in support of their claims asserted against Plaintiff's, their claims as set forth in their Amended Answer, Affirmative Defenses, Counterclaim, and Third-party Complaint are denied.

14. Plaintiffs damage for Waste claim.
Plaintiff incurred damages pursuant to their Waste claim against Defendant in the amount of $622.29 *due to the Defendant's removal of* approximately 40 railroad ties from the road / easement. Said figure is calculated as follows (taken from quote from The Home Depot)" 40 railroad ties @ $12.97 per tie, plus $59 delivery fee. Pursuant to RCW 4.24,630, said amount should be trebled (tripled) to $1,866.87.

15. Declaratory Judgment:
The Court finds that Plaintiff shall have exclusive rights to maintain the road and easement across

the Defendant's property and Defendants shall not interfere with said right.

16. Plaintiff's Attorney's Fees and Costs:
The Court reserved on the issue of Plaintiff's right to seek recovery of their attorney's fees and costs incurred.

17. Third-Party Defendant's Attorney's Fees and Costs:
The Court reserved on the issue of Third-Party Defendant's right to seek recovery of their attorney's fees and costs incurred.

CONCLUSIONS OF LAW

18. Plaintiff's claim for trespass is granted.

19 Plaintiff's claim for waste against Defendant is granted

20. Defendant's claims against Plaintiff are denied.

21. Defendant's claims against Third-Party Defendant are denied.

22. Plaintiff shall be awarded judgment against Defendant in the amount of $1,866.87 for their Waste claim .against Defendant.

23. Plaintiff shall be granted the exclusive right to maintain the road and easement on Defendant's property. Defendant shall not interfere with Plaintiff's use and maintenance of the road and easement.

24. Plaintiff's request for reimbursement of attorney's fees and costs incurred is RESERVED *FOR FUTURE DETERMINATION.*

25. Third-Party Defendant's request for reimbursement of attorney's fees and costs incurred is RESERVED FOR FUTURE DETERMINATION.

Dated this 31st day of Aug, 2007

_____
Superior Court Judge

Presented by:

_____
Grant C. Broer,
WSBA#25588
Atty for Plaintiff's
and Third-Party
Defendants

Approved:

_____
Victor Muresan,

_____
Vioreca Muresan
Defendants

APPENDIX F
CASE NO. 36877-3-11

NOTES TO CLEAR UP DISCREPANCIES IN UNPUBLISHED OPINION

TRUE FACTS

PAGE 2- PARAGRAPH 2-----The road was 12 feet wide not 20 feet wide when the Muresan's bought the property. Pilby widened the road by inserting railroad ties out 4 feet on each side of the roadway after the Muresan's purchased the property. Pilby dug holes to remove the soil and place it on his property to fill in low areas on his own land. I have proof, not hearsay, real proof. No water was flowing or flooding onto the roadway or land before he dug the holes without a permit from Clark County or permission from Muresan's.

(Pilby drove the old owners, Coffman's, from the property bought by the Muresan's by his covetous shenanigans causing Mr. Coffman to have a heart attack)

PARAGRAPH 3---The Muresan's never put building materials in any of Pilbys holes or anywhere else. The Muresan's removed 4 ties to protect the Fish's own children from slipping into the culvert area. They never removed railroad ties from along the roadway but saw Pilby giving them away before he moved out and the Fish's moved in. Clark County notified the Fish's of the application by the Muresan's for a Grading permit after they had assisted in the Forgery of a permit for Jeffrey

Pilby in 1996 after he dug the holes, one year earlier in 1995. (They say they don't want to get involved, they are involved, they caused it.)

The Muresan's have never threatened the Fish's and have had the police called on them for even accessing the livestock on their own property from their own easement. The Fish's have lied to the police concerning the ownership of the property easement. On October 24, 2001 while the man of the house, Victor Muresan, was out of the country and unavailable for court, the Fish's placed an unlawful injunction on the Muresan's property with no due process and based on lies! Their attorney, Denise J. Lukins has a history of helping Jeff Pilby to harass the owners of that parcel of land, as she stated in her letter to the Muresan's on September 27, 2001. Lukins said the road was built to county standards which is 12 feet wide.

Page 3 –2nd PARAGRAPH answered except to repeat the Muresan's are not the ones to fear here as the video tapes taken by the Muresan's prove who the aggressors are. The Fish's also ran a business from their location which was not allowed in Clark County and have retaliated against the Muresan's because of their protest against the overuse and noise of the trucks and 18 wheelers on the roadway easement. The Fish's also have many motorcycles employed to destroy the Muresan's right to peaceful enjoyment of their home and legal business enterprise.

PARAGRAPH 3—After Victor returned from Europe, the December 5, 2001 document was not a letter to the trial court to withdraw the injunction,

the Muresan's hired attorney Steven M. Sowards WBA # 20815 to prepare an Answer and a Counter-claim to take this to court and the Fish's and their attorney didn't show up. They canceled!

Just like they never responded to this Appeal either. No brief filed.! Buckley and Broer had it all worked out! Just like they weren't in court at the start of the trial on May 30, 2007! Any other place if the moving party was not in court, the case would *be dismissed. These courts are so corrupt they don't* even try to hide it. Judge John Wulle says the Muresan's are the reason this case is so old. Could have been settled in 2001, right after it started if Fish's didn't 'DUCK AND RUN.

PAGE 4--- The details of May 30, 2007 are declared in the Petition for Review and the tirade by Judge John Wulle is on tape. As is another tirade shown on National TV channels in early 2009. No citizen should be subject to this conduct anywhere especially in a court of law. Judge John Wulle was appointed with the strong help of the Clark County Commissioners as stated in the Columbian, December 8, 2007, '" Wulle, a former assistant attorney general, was appointed by Clark County *Commissioners to the District Court bench in 1997*" Jeff Pilby and Clark County has violated the Muresan property rights and, In My Opinion, are protecting themselves from further litigation! Judge John Wulle has a Conflict of interest!

PAGE 5---Brian Fish said that Victor Muresan wouldn't mow the grass but the Fish's prevented that by constant interference when he did and was cited by the county for weeds when the Fish's

wouldn't allow them on their own property. Mr. Fish has used and hired Mr. Webster to mow Mr. Muresan's grass and kept it. The railroad ties were not on the Fish's property and the only time Fish counted the railroad ties on the easement was with Victor Muresan. The Muresan's were not even members of a church when Fish's lie was spun about that. Vioreca never spoke with him!

PAGE 6---Mr. Fish testified that he was not aware of the flooding conditions before he bought his property so of course his testimony is clouded as to the absence of flooding before Pilby dug the ditches. The absence of flooding is also stated in the neighbor's letters. Appendix K

PAGE 9--- All parties did not appear at the start of the trial on May 30, 2007 and their attorney said they were witnesses. Mr. Broer was the only one there besides the Judge, court personnel and the Muresan's. They were not in the court room the entire time the Muresan's were there. On November 5, 2001 the Muresan's were ruled against because the Muresan's were not in the courtroom so unless it is a double standard the Fish's should have been ruled against too! The Fish's were Plaintiffs and Pilby was a Third-Party Defendant so the representation by Grant Broer for both of them is a pure Conflict of Interest. The Fish's should be suing Pilby for the railroad ties since he was the one who sold them to the Fish's in 1998, three years prior. to this lawsuit. Pilby caused the problem and then skips town when he is the one who obviously misrepresented the property in the sale, if railroad ties are missing,

and the Muresan's had nothing to do with the sale of Pilbys property. Yet they are being held accountable, WHY? The tirade of Judge John Wulle should invalidate the entire event. Was it to hard to nicely explain the process to these beautiful people? Guess it's just easier to take advantage of them! Why did they not get some assistance with their obvious language difficulty and assure the due process of law.?

PAGE 11—The Muresan's did enter exhibits in the case and it should be a part of the court record but it was returned to them the day of the trial unused by Judge John Wulle. The cost of an engineering study was borne by the Muresan's to provide a professional report of the condition of the land in regards to continued flooding, both with and without the ditches. The history documented by the surrounding property owners should carry more weight then someone who didn't live there during the time frame in question. Instead hysterical ranting is considered evidence by this court.

PAGE 14—These so called missing railroad ties would be rotten by the time Brian Fish *"discovered"* them missing almost 3 years after purchasing the property and installed with the disapproval of the Muresan's on their own property years earlier. RCW 4.24.630 Damages under this statute include *"the market value of the property removed or injured."* I guess a few old rotten railroad ties are worth the loss of the use of one's own property weighed against the rights of the rightful property owner and all property law in Washington state.!

So the Muresan's will pay the property taxes ($ 5,000.00, over Five Thousand Dollars this year) and though Brian and Cari Fish have never spent one dime of their own money will have the benefit of the Muresan's property against the entire concept of the definition of a land owner stated in N., O, P, Q, U, R, S, T, U, V Appendix in short form. In Appendix N, Judge John Wulle states:

> ""*they (Fish's) may do what the easement* permits them to do by the documents."

If Judge John Wulle is referring to the deed, it only grants ingress, egress and utilities. This is nothing but a LAND GRAB!

I hope all Washingtonians will learn about this case because of the lawlessness of their Opinion but the Appellate Court must not want the public to know and are too ashamed of it to publish it in the standard way of public notice, published in the

Washington Appellate Reports

APPENDIX H
DATE DECEMBER 8, 2007
THE COLUMBIAN

JUDGE WULLE CENSORED BY COMMISSION

Clark County Superior Court Judge John Wulle was censured Friday for "demeaning, offensive and shocking" behavior at a training conference last year. Wulle, 57, appeared before the state Commission on Judicial Conduct in SeaTac.

The judge and seven other people from Clark County, including a deputy prosecuting attorney, a juvenile probation officer and a defense attorney, attended "Planning your Juvenile Drug Court." July 24 to 28, 2006, in Los Angeles..

According to a nine- page document posted on the commission's Wed site, Wulle used profanity, made an obscene gesture in response to a request to lower his voice and referred to Clark County's group facilitator as "the black gay guy" while a the Los Angeles event. Also, after a facilitator said, "Clark County gets a star" for finishing an assignment, Wulle said, "I don't need a star. I'm not a Jew."

Several witnesses said Wulle smelled of alcohol, according to the censure order.

"(Wulle) denies consuming alcohol at any time during the conference," the order reads. "He recalls suffering from a cold and taking cough syrup, and suggests the odor from the cough syrup may have been misconstrued as an odor of alcohol."

For sanctions, Wulle must take 10 hours of judicial ethics courses and obtain a drug and alcohol evaluation. If a counselor recommends

treatment, then the counselor must submit progress reports every six months.

Wulle must also take seven hours of racial, religious, sexual orientation and diversity training.

A censure is the most severe disciplinary action the commission issues, short of asking the state Supreme Court to suspend or remove a judge. *Wulle is the first Clark County judge to be censured*, and only the second judge to be disciplined. In 1995 a judge was "admonished," the lowest form of discipline, for providing written testimony on behalf of a friend in a child visitation case in another county. Judges are not supposed to give such opinions without a subpoena.

Wulle said Friday he will use the incident as a learning experience.

"It was never my intent to offend anyone, and I apologize to anyone who was offended," he said.

When Wulle first responded to the allegations in February, he denied impropriety. He wrote to the commission that he has learned "that I cannot step out of my role as a judge even when I'm 2,000 miles away."

But Wulle was sent to the conference in the first place because of his role, the commission noted.

"Because of the special position judges hold in society—as standard bearers of fairness and impartiality-----a judge's conduct of personal behavior must , at all times, be above reproach," the commission wrote.

"Wulle's) actions not only reflected poorly on himself, but also on his fellow team members, his court, Clark County and the state of Washington,"

the commission wrote. "Wulle's inappropriate behavior significantly undermined the team's respect for him. Witnesses at the conference variously described his actions as embarrassing, demeaning, offensive and shocking. Several team members discussed (Wulle's) problematic behavior with their colleagues and supervisors__furthur eroding public regard for him and the judiciary."

The commission said Wulle's conduct "appears to have been an aberration" and that witnesses do not think Wulle is racist, homophobic or anti-Semitic.

Wulle's reputation is "generally that of a thoughtful jurist," the commission wrote.

At the same time, the commission said it censured Wulle, as opposed to a less-severe sanction, partly because of his attitude.

Wulle has demonstrated a lack of personal insight, had never apologized, when confronted by witnesses or other judges who heard about his behavior, has been "dismissive" of their concerns, the commission wrote.

Wulle, a former assistant attorney general, was appointed by
CLARK COUNTY COMMISSIONERS
to the District Court bench in 1997.

In 2000, he was elected to an open seat on the Superior Court bench. He will be up for re-election next year.

Clark County did start a juvenile drug court this year, but after presiding Superior Court Judge Robert Harris learned about Wulle's behavior at the conference he reassigned the project to Judge James Rulli.

Harris was out of town Friday, but Judge Barbara Johnson, the second-most senior member of the bench, said the censure order is taken seriously. "We hope that the appropriate steps are taken to learn from it and move on." Johnson said.

PUBLIC DISCUSSION MAY HAVE CONSEQUENCES.

It's too early to tell whether Wulle will get in further trouble for discussing the censure prior to Friday's hearing.

Any pending complaint would be confidential, said Reiko Callner, executive director of the Judicial Conduct Commission.

Callner said commission chairwoman Wanda Briggs did talk about the importance of confidentiality and noted that, contrary to those rules, the matter had been disclosed to the media

Last week, Tom Koenninger, The Columbian's editor emeritus, said Wulle showed him a copy of the censure order. Koenninger wrote a December 5 column defending his longtime friend.

(articles by Stephanie Rice)

JUDGE JOHN P. WULLE
IMPROPRIETIES
COLLUSION DISCRIMINATION
CONFLICTS OF INTEREST
WASH. ATTORNEYS AND JUDGES

WILLIAM J. SOBOLEWSKI, P.E
CONSULTING ENGINEER
5514 N.E.Lessard Road
Camas, WA.. 98607
360-833-9386
Licensed in Oregon and Washington
No. 06206 No. 22435

February 26, 2002
Victor Muresan
18617 N.E.Davis Rd.
Brush Prairie, WA. 98606

Dear Mr. Muresan:
The following is a letter report of my site visit to your property on January 31, 2002

Scope of Work---You requested that I determine the cause of flooding on your property----if the two ditches adjacent to the gravel access road were necessary ?

Site Visit---the weather was cloudy and rainy, I viewed your videos and walked the property .and read the letters from your 4 flooded neighbors.

Findings of Site Visit---Surface water runs from Webster property----enters a small culvert crossing the gravel access road----culvert was submerged---water flows out of the culvert northerly and *overflows into a swale*---"The surface water enters the swale and flows along the north end of your property; thus causing flooding on the north end of the property and properties downstream from your property.

Conclusions and recommendations---Most of the westside ditch along the gravel access road to the Fish property has no functional value as a conveyor of surface water in the area. The ditch has a flat gradient to N.E.Davis Road, which prevents water from flowing. towards N.E.Davis Rd. The ditch also has vegetation which restricts the movement of surface water. It appears very little surface water enters the ditch and flows south to N.E.Davis Rd. where a roadside ditch carries surface water runoff to China Ditch. The ditch along the west side of the gravel access road is therefore not needed and there should be no adverse impact if the ditch is filled to a few inches below the grade of the access road.

At the same time, the culvert can also be removed. This would then eliminate flooding on your property and properties down stream from your property. The existing ditch on the eastside of the gravel access can also be filled if all surface water runoff is controlled on the Webster property. Construction of underground drainage system with piping to an adjacent creek or the evacuation of a new ditch outside the 60 foot easement to North East .Davis should be investigated.

"You prefer the existing ditches on both sides of the gravel access road be filled. This would then provide you an area to cut grass hay for your animals. You received an estimate from Nutter Corporation on Dec. 5, 2001 that estimates the cost of $7, 205.00 to fill approximately 900 L.Fof ditches and leave a mow-able surface. (condensed)

William J. Sobolewski

Mr, & Mrs. Victor Muresan
18716 N.E.Davis Road
Brush Prairie, WA. 98606

Dec. 1, 2001

RE: Flooding of property
Sammy M. Rhyne
18732 N.E.Davis Road
Brush Prairie. WA.

Dear Mr. & Mrs. Muresan

Our property did not flood until the gentleman who purchased the property directly north of your property (and east of ours) began grading and excavating his driveway. Our front yard and the ground east of our driveway now have standing (flooding) water problem whenever it rains.

As has been demonstrated by the latest rains, our driveway is almost under water as well as our front yard. I would also like to point out that the neighbors" property also now has standing water (flooding) in the southwest corner of his property. (Near our front yard and directly behind your north pasture that had never had standing water until this driveway was put in)

We have resided in our home at this address since June 1981 and can support you in the belief that this problem did not exist prior to the change in the terrain back in 1995

Sincerely,

SAMMIE M. RHYNE

Mr. & Mrs. Muresan
18716 N.E.Davis Road
Brush Prairie, WA. 98606

Dec. 1, 2001

RE: Flooding of property
Anna Scott
18612 N.E.Davis Road
Brush Prairie, WA.

Dear Mr. & Mrs. Muresan

Flooding of my property did not occur until the driveway on your easement was excavated. Even though my house and yard have not been affected, the volume of water standing in the pasture directly west of my home has increased tenfold. My concern lies with the fact that all the water draining from your property, Sammie Rhyne, Alan Anderson, as well as the property for whom the driveway was built, is now running down into the pasture and then into the China Ditch.

Since the pasture where the water stands is a separate Platt from my home, if I choose to sell my property I am concerned that the resale value due to standing water will be diminished.

I have resided in my home at this address since fall of 1971 and can support you in the belief that this problem did not exist prior to the change in the terrain back in 1995.

Sincerely,

ANNA SCOTT

APPENDIX L

TO; Horne, Chris
SUBJECT; GRD 2001-00081 Muresan
Hi, Chris

I am reviewing a grading permit application that is part of a neighborhood feud, and I am trying to make sure that the county is not involved with the feud. Let me give you some background.

Muresan owns a four- acre parcel (207645000) along N.E.Davis Road, just east of N.E.Ward Road that has a 60-foot access easement across the east end (away from the house) providing access to the parcel behind (207645005). In July 1996 the owner of the back parcel (Pilby) obtained a grading permit to dig a ditch on both sides of his driveway through their easement on Muresan's parcel (GR960124)

This became a feud between the two property owners. The Muresan's, who are immigrants, were mad that Pilby was doing this work on their land. Even though it was in an easement granted to Pilby's parcel. Before issuing the permit, we contacted county counsel, who told us that we could issue the grading permit. The conflict over grading and other matters concerning the easement are civil matters to be worked out in court. The grading could be stopped by a civil act. So we issued a permit for the ditches.

Since then, Pilby has sold to Fish. Muresan claims that these ditches are causing flooding on their land. (They also claim that Fish is dumping stormwater onto their parcel in other locations) Muresan has now applied for a grading permit to refill the ditches. I have visited the site, and it is unlikely that the ditches are causing any flooding.

Muresan seems to be filling in these ditches more to retaliate against Fish than to alleviate drainage concerns.

This is what I am inclined to do:

I would like to issue the grading permit to allow Muresan to fill the ditches along both sides of Fish's driveway as it goes through the easement on Muresan's land. I will condition it that access must be maintained through Muresan's land to Fish's property, that no stormwater be directed to Fish's land or the county ditch along Davis Road, and that proper erosion control measures be installed.

As with the previous grading permit, I will let any conflicts over grading and other matters con cerning the easement be handled as civil matters between Muresan and Fish in court.

Does this sound OK to you, or should I go about this a different way? If you have any questions, or would like to see some drawings, my extension is 4347. Thank you for helping with this.

NO NAME

NOTE: CLARK COUNTY INTER-OFFICE MEMO TO CHRIS HORNE DISCUSSING THE FRAUDULENTLY OBTAINED PERMIT OF JEFF PILBY, ONE YEAR AFTER HE DUG THE DITCHES WHICH STARTED THE FLOODING IN THE WHOLE AREA. NEIGHBORS FEUDING AND SAYING " THE MURESAN'S, WHO ARE IMMIGRANTS, WERE MAD THAT PILBY WAS DOING WORK ON THEIR LAND." THE WORK HE WAS DOING WAS STEALING 480 CUBIC YARDS OF TOP SOI L.. NO SMALL MATTER

REPLACEMENT COST $7, 200.00